

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Investigation by the Department of Telecommunications  
and Energy on its own Motion into the Appropriate  
Regulatory Plan to succeed Price Cap Regulation for  
Verizon New England, Inc. d/b/a Verizon Massachusetts'  
intrastate retail telecommunications services in  
the Commonwealth of Massachusetts

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D.T.E. 01-31-Phase I

November 30, 2001

HEARING OFFICER RULING ON MOTION BY AT&T COMMUNICATIONS OF NEW  
ENGLAND, INC. FOR LEAVE TO FILE SUPPLEMENTAL SURREBUTTAL  
TESTIMONY

I. INTRODUCTION

On November 13, 2001, AT&T Communications of New England, Inc. ("AT&T") filed with the Department of Telecommunications and Energy ("Department") a Motion for Leave to File Supplemental Surrebuttal Testimony of Deborah S. Waldbaum ("AT&T Motion to File Supplemental Surrebuttal"). AT&T attached the supplemental testimony of Deborah S. Waldbaum to its motion. On November 19, 2001, Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon" or "VZ") filed a response to AT&T's Motion to File Supplemental Surrebuttal ("VZ Response"). On November 20, 2001, the Attorney General for the Commonwealth of Massachusetts ("Attorney General" or "AG") filed comments in support of AT&T's motion ("AG Comments").

II. STANDARD OF REVIEW

The Department's procedural rule, 220 C.M.R. § 1.06(6)(b)(1), authorizes the presiding officer to establish a detailed schedule for proceedings, including, but not limited to, dates for the filing of information requests and responses, evidentiary hearings, and for the filing of testimony and briefs. In addition, 220 C.M.R. § 1.06(6)(b)(1) authorizes the presiding officer to address any procedural matters that will aid in the orderly disposition of the case.

### III. POSITIONS OF THE PARTIES

#### A. AT&T

In its Motion to File Supplemental Surrebuttal, AT&T requests that the Department allow supplemental testimony from AT&T's witness, Deborah S. Waldbaum ("Waldbaum") in order to respond to information provided by Verizon in its response to ATT-VZ-2-8 (AT&T Motion to File Supplemental Surrebuttal at 1). AT&T argues that when it filed its surrebuttal testimony on November 1, 2001, Verizon had not yet responded to ATT-VZ-2-8, and rather than request an extension of the procedural schedule, AT&T timely filed its Waldbaum surrebuttal and reserved its right to supplement pending Verizon's response (id.). AT&T argues that the supplemental testimony it seeks to file are the results of Waldbaum's investigation into the accuracy of Verizon's statements regarding the E911 database (id.). AT&T argues that allowing the Waldbaum supplemental testimony will aid the Department in its analysis of Verizon's reliance on the E911 database to measure competition in Massachusetts (id. at 2).

#### B. Verizon

In its response to AT&T's Motion to File Supplemental Surrebuttal, Verizon states that it has no objection to AT&T's request to file additional testimony, provided that Verizon has the opportunity to file supplemental rejoinder testimony (VZ Response at 1). Verizon argues that if the Department allows AT&T's Motion to File Supplemental Surrebuttal, Verizon's opportunity to respond and to file the last round of testimony should not be undermined (id.).

#### C. Attorney General

In his comments, the Attorney General supports AT&T's Motion to File Supplemental Surrebuttal (AG Comments at 1). The Attorney General asserts that the Department should grant AT&T's motion because the supplemental testimony sought to be filed relates directly to competition, the core issue of this phase of the Department's investigation (id.). The Attorney General asserts that AT&T should be allowed to supplement its testimony because it relates to information produced by Verizon only after the deadline for surrebuttal testimony had passed (id.). In addition, AT&T has given the Department and all parties adequate notice of the factual dispute prior to the scheduled evidentiary hearings (id.). The Attorney General urges the Department to allow AT&T's Motion to File Supplemental Surrebuttal because if AT&T shows that the E911 database is an unreliable measure of competition, then Verizon's assertions regarding levels of competition are likewise unreliable and should be disregarded (id. at 2). If the Department grants AT&T's motion, and then allows Verizon the opportunity to file supplemental rejoinder testimony, the Attorney General suggests that the deadline for discovery be extended (id. at 1 n.1). In the alternative, the Attorney General suggests that AT&T be permitted to present oral supplemental surrebuttal at the start of the evidentiary hearings, followed by cross examination and oral supplemental rejoinder by Verizon (id.).

#### IV. ANALYSIS AND FINDINGS

As discussed in a previous hearing officer ruling in this case,<sup>1</sup> it has been the Department's discretionary practice to allow pre-filed testimony in circumstances where it will be helpful to create a complete and accurate record upon which to base findings and rulings, and to focus issues for the evidentiary hearings. See Cablevision of Boston, Inc., D.P.U./D.T.E. 97-82, at 6, Hearing Officer Ruling on Complainants' Motion to Strike and Motion for Leave to File Rebuttal Testimony (February 3, 1998); M.D.T.E. Tariff No. 17, D.T.E. 98-57-Phase I at 3, Hearing Officer Ruling on Verizon Massachusetts' Motion to Amend Procedural Schedule (November 3, 2000). In the October Hearing Officer Ruling at 4-5, the Department determined that Verizon's Massachusetts Competitive Profile and limited additional surrebuttal and rejoinder testimony would be beneficial in creating a complete and accurate record, and would aid in focusing the disputed areas for the evidentiary hearings. For the same reasons, I find that AT&T's proposed supplemental surrebuttal testimony of Deborah Waldbaum is appropriate. Ms. Waldbaum's supplemental testimony concerns information that AT&T received from Verizon only after the deadline for surrebuttal had passed. Further, the issue upon which AT&T seeks to testify (i.e., the accuracy of Verizon's statements regarding the E911 database information) is highly relevant to this phase of the proceeding and will be an important factor discussed in the upcoming hearings. Therefore, AT&T's Motion to File Supplemental Surrebuttal is granted and the Supplemental Surrebuttal Testimony of Deborah S. Waldbaum on behalf of AT&T, dated November 13, 2001, is accepted for filing.

Turning to Verizon's request to file supplemental rejoinder testimony in response to the additional testimony by Ms. Waldbaum, I determine that a narrow response by Verizon is appropriate. I agree with AT&T that Verizon has had several opportunities to explain its use of the E911 database to support its assertions regarding the levels of competition in Massachusetts, however, Ms. Waldbaum's supplemental testimony is the first specific challenge to Verizon's reliance on the database, and a direct response by Verizon will serve to concentrate the dispute for the upcoming hearings. Therefore, Verizon may file narrow supplemental rejoinder in response to the additional Waldbaum testimony on or before Tuesday, December 4, 2001.

#### V. RULING

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<sup>1</sup> D.T.E. 01-31-Phase I at 4, Hearing Officer Ruling on Motion by AT&T Communications of New England, Inc. To Strike Parts of the Testimony of Robert Mudge and Michael J. Doane, Or, in the Alternative, for Leave to File Surrebuttal After Discovery, if Warranted, and Motion by AT&T Communications of New England, Inc. To File Surrebuttal Testimony in Response to the Rebuttal Testimony of William E. Taylor (October 16, 2001) ("October Hearing Officer Ruling").

AT&T's Motion to File Supplemental Surrebuttal is granted. Verizon may file a response to AT&T's supplemental filing on or before Tuesday, December 4, 2001.

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. Any appeal must include a copy of this Ruling.

Date: November 30, 2001

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Paula Foley, Hearing Officer